

Subject: Re: Few questions about UPI/Duke Students for an Ethical Duke
From: "KC Johnson" <kjohnson9@gmail.com>
Date: Wed, 14 Nov 2007 03:43:13 -0500
To: "Elliott Wolf" <elliott.wolf@duke.edu>

Elliot,

Hmm.

On the latter clause first: On the last sentence, We do reference a behind-the-scenes request from the administration to Nifong that a statement be issued saying the other 43 weren't under investigation, and Nifong agreeing to do so. (I don't have a copy of the book in front of me--am currently in DC, have traveled back here for two conference addresses this week, but will get the specific page number to you later today. Of if you have a copy, it's mentioned just after the Evans arrest.)

The first sentence of that clause is an issue that the book doesn't discuss at all, or raise in any way. The second sentence, I suppose, could refer to items in the book (for instance, we discuss senior administrators saying they would turn over notes from all discussions with the players without a warrant, even though both Trask on 3-24 and Brodhead on 3-28 had assured the players that whatever they said would be protected). That said, this issue is something of an irrelevancy to the case as a whole: the players had nothing to hide, and they were fully aware that these promises were likely to be empty ones. I think there are far stronger criticisms of Brodhead than can be made than this sentence (I never raised it in the blog, for instance).

The first sentence--the book presents no evidence that Nifong "went out of his way" to do anything for the Duke administration. It does note Nifong's praise of the Duke administration in late March, and his willingness to issue the statement about the 43, but those matters don't suggest a policy of going "out of his way" to do anything. It's clear, of course, that Nifong didn't view the administration as an obstacle to his plans.

On the second clause: You're absolutely right--the book makes no such claim. There's no evidence that the administration was simply waiting for a trigger event to spring all these committees on Duke--i.e., if it weren't the McFadyen email, it would have been something else. I suspect that Larrey is probably correct in one respect: it's hard to believe that the administration came up with the ideas for all of these committees in the several hours between the publication of the McFadyen email and the Brodhead letter announcing the committees, and I'd be amazed if there hadn't been some sort of contingency planning between 3-27 and 4-5. But that's just a hunch on my part: this isn't an issue on which I ever did any reporting because (as with the issue in the 1st item) it didn't strike me as very important. The decision to place Holloway, Wood, and Allison in leadership committees of the CCI *was* important; whether the administration conceived of the CCI on 3-30 or 4-5 strikes me as of little significance.

On the first clause: The last sentence is clearly true. The others are not.

The policy was conceived and implemented by the DPD (how could the administration have "implemented" a police policy?). The pressure for the policy (as you know) came from Trinity Park hard-liners. There's no evidence that the administration conceived of the policy--although they clearly did support it once the DPD/Trinity Park coalition presented it to them. The H-S article (copied below) makes clear there was an official policy and that Duke had advance knowledge of that policy. (That its nickname was the GNP Stuart and I discovered in conversations with off-the-record sources.)

My criticism on this point always has been *not* that the administration "implemented and maintained" the policy--but that, when presented by the local police force with an official policy that treated Duke students and only Duke students more severely than any other resident of Durham for identical offenses, the administration had a positive obligation to protest the policy. Separate-but-equal legal

procedures do not work. This failure to stand up for Duke students' basic due process rights vis-a-vis the DPD would foreshadow the administration's response, between 3-29 and 12-22, to Nifong's procedural abuses.

General reaction: In my critiques of the Duke administration and Duke faculty, I've tried to be very precise in what I say, and always to have direct corroboration (through documents, if at all possible) for any claim that I make. This approach is one of the things that I admire most about your writing, as well--the Bryan series was absolutely devastating because you always could link, and every link confirmed what your articles said.

I believe that any serious critic of the administration's handling of events in the past 18 months must adhere to such a standard.

Let me know if this is OK, or if you want to talk in more detail--

KC

H-S: For reasons that are (to put it mildly) strange, the H-S article doesn't even appear on Lexis-Nexis. Here's a JinC post that extensively quoted from it right after it appeared, and a N&O piece that covered some of the same grounds--

<http://johninnorthcarolina.blogspot.com/2006/09/duke-lacrosse-h-s-oks-gottlieb-as-duke.html>

The News & Observer (Raleigh, North Carolina)

September 18, 2006 Monday
Final Edition

Police OK'd Duke crackdown;
Durham chief says an officer tough on Duke students was part of an effort to fight rowdy parties

BYLINE: Michael Biesecker, Staff Writer

SECTION: NEWS; Pg. B1

LENGTH: 751 words

DURHAM -- Durham's police chief says one of his officers was just doing his job last year when he aggressively cracked down on partying college students in the city's Trinity Park neighborhood.

The record of arrests made by Sgt. Mark Gottlieb, who supervised the investigation that led to the arrest of three Duke University lacrosse players on rape charges, is being closely scrutinized by defense attorneys.

About a month before the March 13 team party during which an escort service dancer says she was attacked, Gottlieb changed jobs from a position supervising patrol officers in police District 2, an area that includes Trinity Park.

An article in the Sept. 9 issue of The News & Observer recounted that Gottlieb had arrested at least 20 Duke students during his time in District 2, a number that appears disproportionate compared with three other patrol sergeants working in the same area at the same time.

Court records show Gottlieb arrested many of those students and took them to jail on misdemeanor

charges, such as possession of an open container of alcohol and violating the city's noise ordinance. Meanwhile, some nonstudents intercepted by Gottlieb were not arrested, but instead were written citations similar to a speeding ticket on seemingly more serious charges such as possession of marijuana and a concealed firearm.

Police Chief Steve Chalmers declined to be interviewed about Gottlieb before publication of the Sept. 9 article, but he said Thursday that the record must be put in the context of his department's wider efforts to combat student drinking and partying at rented houses in Trinity Park.

Fed-up residents in the neighborhood had requested "zero tolerance" enforcement of alcohol and noise violations by police, and in August 2005 one of Gottlieb's supervisors, Capt. Ed Sarvis, sent a letter to known party houses warning students they risked arrest if the rowdy behavior persisted.

The police chief said officers patrolling Trinity Park were specifically instructed to arrest problem students rather than cite them. Gottlieb not only was carrying out those directions, Chalmers said, but was likely to have made more arrests than other officers because he volunteered to work extra shifts patrolling areas near Duke's campus.

"Most sergeants don't make many arrests at all, but Mark is a hands-on supervisor," Chalmers said. "He was doing his job. He was just doing it more aggressively than some others. That doesn't mean he was wrong."

Before the publication of the Sept. 9 article on Gottlieb, N&O reporters repeatedly asked city and police officials whether Gottlieb was following orders in treating Duke students more aggressively than others. Chalmers said he declined to talk because he has generally avoided commenting on anything related to the lacrosse case. He said he discussed the issue with City Manager Patrick Baker and deferred to him.

In an interview Sept. 8, Baker said cracking down on the partying was an enforcement priority but that "to his knowledge" Gottlieb was not under any specific direction to treat Duke students differently. Baker also made no mention of Sarvis' letter warning the students they might be arrested.

Baker clarified Friday that he was simply not aware of the additional information.

On Monday, Duke's campus newspaper, The Chronicle, published an article that included comments from students and former students about their treatment when arrested by Gottlieb.

Urosh Tomovich recounted how Gottlieb and officers raided his house at 3 a.m. after a party, pulling him and his roommates out of their beds, handcuffing them and dragging them downstairs. Charged with violating the noise ordinance and having an open container of alcohol, Tomovich said he was taken to a room and questioned by Gottlieb, who then threatened to have him deported. Tomovich, then 21, is a U.S. citizen.

Andrea Brezing, another Duke student who is 21, recounted how she and her roommate were arrested for an alcohol violation and locked in a holding cell until the next morning with a woman whose clothes were covered in blood.

Tomovich, as well as several other students, were reached by The N&O over the past month but declined to be interviewed about Gottlieb. Attempts to reach Brezing were unsuccessful.

Chalmers said Thursday that he had read The Chronicle story but didn't see any reason to change his opinion that Gottlieb is a good officer. "If what they say is the truth," the police chief said of the students, "then they should have filed a complaint."